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To: Board of Selectmen
From: John Murray 
CC: Steve Barrett, Doug Halley
Date: May 30, 2003
Re: Sewer Construction Project Update

As the Board may recall, the Town funded \$24,252,290 of the \$25,518,050 (95%) sewer project by a "Zero Percent Grant Program" administered by the Department of Environmental Protection (DEP) and the Water Pollution Abatement Trust (the Trust). The remainder of the cost of the project was to be borne by a market rate bond, the sewer gift account and Chapter 90.

The Grant program functions as a line of credit with DEP being the invoice-approving entity for eligible costs and the Trust acting as the Bank. As with all federal pass-thru grants, there are many strings attached to the Grant. To oversimplify the status report, it has been a roller-coaster month concerning the status of \$411,507 line of credit which has not been dispensed to contractors.

On or about May 6, 2003, Staff was informed by the Trust that due to arbitrage concerns at the Trust, it was going to cancel the Town's remaining line of credit effective June 30, 2003 and issue a replacement line of credit in the same amount July 1, 2003. On or about May 13, 2003, DEP informed Staff that the line of Credit would be effectively cancelled on June 16, 2003 and that a replacement line of credit would not be issued. Staff informed DEP that the reason the line of credit had not been drawn down was not due to the lack of vendor invoice submission, rather the Town was actively disputing amounts with contractors and was not willing to pay. Abandoning these disputes would drive the project over budget. DEP advised Staff that if the Town wished to have access to the remaining line of credit, it should relinquish its claims and settle the matter prior to June 16, 2003. Staff engaged Town Counsel to attack the problem on multiple fronts. The first front was for Town Counsel to contact Counsel for the Trust and plead our case. The second front was to engage all three contractors and their respective sub-contractors, who have sought direct payment from the Town to resolve all outstanding issues. In addition, Staff contacted the Trust to plead our case.

Due to a great deal of help from Town Counsel, staff members of the Trust and Counsel of the Trust, the Town was able to obtain a majority vote on May 29, 2003 by the Executive Board of the Trust, which includes DEP representation, that the Town's line of credit would be extended beyond June 30, 2003. I cannot commend Counsel and staff members of the Trust enough on their understanding of the practical issues involved in "Contractors Disputes", and the unique methodology employed by the Town to finance this project purely upon user charges.

Subsequent to the vote, Town Counsel was informed by the DEP representative that the Town would not be able to access those funds due to the fact the contractors have not satisfactorily complied with the Minority Business Enterprise (MBE) requirement. One of the disputes the Town has with each of the three contractors, which DEP suggested we cave upon, is that they have not obtained DEP sign-off for MBE compliance. Staff instructed Town Counsel to inform DEP that it believes the MBE requirement will be met, given the fact that the line of credit will continue after June 30, 2003.

The process of closing out the Sewer Project is not going to be pretty. Staff and Town Counsel is bawling with three general contractors, a sub-contractor who has requested direct payment from the Town, and State bureaucracies to bring the project in on cost, while obtaining all the bided services.

Located in the "Confidential folder" is a list of frequently asked questions. Due to the length of the Selectmen's Meeting schedule, Staff will not prepare a presentation of this issue, but will be ready to answer the Board's questions.